

DETAILED ACTION

Allowable Subject Matter

1. Claims 1-24 are allowed.

EXAMINER'S AMENDMENT

2. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.
3. Authorization for this examiner's amendment was given in a telephone interview with Applicant's attorney, Mr. Reed A. Duthler, on 4 March 2010.
4. The application has been amended by rewriting claim 10 as follows:

Claim 10 (Currently amended) A method of providing capture management in an implantable medical device, the method comprising:

monitoring for indicators of a likely increase in pacing threshold in the absence of a pacing threshold search of the type that comprises delivering pacing pulses;

increasing a safety factor used in setting a pacing pulse output energy responsive to a said indicator of increased pacing threshold detected in the absence of a said pacing threshold search;

wherein said indicators of increased threshold include a refractory sensed events or events triggered by refractory sensed events in the absence of a pacing threshold search of the type that comprises delivering pacing pulses; and

increasing a safety factor used in setting a pacing pulse output energy responsive to said refractory sensed events or events triggered by refractory sensed events in the absence of a said pacing threshold search.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ferek-Petric (US Patent no. 7,317,943) describes a capture threshold measurement that provides teaching regarding the use of sensed physiological factors, such as arrhythmia sensing, and/or non-physiological factors, such as lead damage, can be used as indicators of a likely increase in capture threshold. However, no teaching can be found in Ferek-Petric regarding the increase of an applied safety pacing factor in response to sensed indicator or increased threshold. Ferek-Petric is a commonly owned, 35 USC 102(e) date reference, which is disqualified from use under rejection of 35 USC 103(a) in view of 35 USC 103(c).

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian T. Gedeon whose telephone number is (571) 272-3447. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl H. Layno can be reached on (571) 272-4949. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Carl H. Layno/
Supervisory Patent Examiner, Art Unit 3766

/B. T. G./
Examiner, Art Unit 3766
4 March 2010